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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
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Bell Atlantic Mobile Systems, Inc. )  
 )  
Petition for Special Relief )  
Concerning Enhanced Specialized )  
Mobile Radio Applications and )  
Authorizations )

To: The Commission

Doc. 93-252

FEDERAL COMMUNICATIONS  
COMMISSION  
OFFICE OF THE  
SECRETARY

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OPPOSITION

Dial Page, Inc. ("Dial Page"), by its attorneys, submits its Opposition to the Petition for Special Relief in connection with immediate reclassification of the Enhanced Specialized Mobile Radio ("ESMR") service from a private land mobile radio service to a commercial mobile service, which was filed by Bell Atlantic Mobile Systems, Inc. ("BAMS") on December 22, 1993.<sup>1</sup> BAMS urges the Commission to immediately regulate ESMR service as a commercial mobile service without providing the Specialized Mobile Radio ("SMR") operators implementing these wide area networks the benefit of the three year transition period provided by the Omnibus Reconciliation

<sup>1</sup> The BAMS Petition was filed on December 22, 1993, but has not been placed on public notice. Nor was the Petition served on any of the parties that filed comments/reply comments in response to the Commission's Notice of Proposed Rule Making FCC 93-454), Regulatory Treatment of Mobile Services, GN Docket No. 93-252, 8 FCC Rcd 7988 (1993) ("CMS Rule Making"). Consequently, the provisions of Section 1.45 of the Commission's rules are not applicable at this time. However, in light of the Commission's anticipated action in the CMS Rule Making within the next several weeks and this Petition's relationship to the CMS Rule Making, Dial Page takes this opportunity to oppose the Petition.

Act of 1993 ("Budget Act"). Further, BAMS seeks the Commission to require that the ESMR service offer equal access to all interexchange carriers. Alternatively, BAMS asks that the Commission defer action on all pending and future applications for new or modified ESMR systems, or condition such grants on the completion of the Commercial Mobile Service Rule Making.

Dial Page opposes BAMS Petition because (1) it is procedurally defective, (2) it is factually inaccurate regarding the alleged "ESMR service," and (3) it appears to be filed for anti-competitive reasons. Dial Page agrees that SMR systems that implement wide-area SMR networks utilizing digital technology and re-using SMR frequencies should be regulated as a commercial mobile service. However, the three-year period provided by Congress to permit transition from being regulated as a private carrier to a commercial service provider is necessary to ensure that existing SMR customers do not abruptly lose access to vital telecommunications services, which may not be readily available from other service providers. In support of Dial Page's opposition, the following is shown:

**I. Preliminary Statement.**

Dial Page is a Delaware corporation which provides Public Land Mobile Service, Private Carrier Paging Service, and SMR Service throughout the southeastern United States. Dial Page's experience in and ongoing commitment to offering mobile

communications services throughout the southeast makes it uniquely qualified to respond to BAMS Petition.

## **II. Discussion.**

BAMS Petition for Special Relief is no more than further comments/reply comments in the Commission's Commercial Mobile Service Rule Making. The Petition relies on comments filed in CMS Rule Making to make its argument for immediate reclassification of the ESMR service to a commercial mobile service. There is nothing in the Petition which demonstrates good cause for failing to address the issue of the transition period of the ESMR-type systems within the period designated by the Commission for filing comments/reply comments in the CMS Rule Making. Certainly, the issue of which service within the private land mobile radio services is eligible for the three year transition period was one that should have been addressed in the CMS Rule Making as opposed to a separate proceeding. Other parties to the CMS Rule Making addressed the three-year transition period in their comments.<sup>2</sup> Thus, BAMS had the opportunity and the forum to raise these issues. Accordingly, the BAMS Petition should be dismissed for abuse of the Commission's processes, or, alternatively, treated as a late-filed Reply Comment in the CMS rule making.

BAMS Petition is factually incorrect as there is no "ESMR service" other than facilities authorized under the rules and

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<sup>2</sup> See Comments of Nextel at 2-3, 14-16; Comments of the American Mobile Telecommunications Association, Inc. at 14-15.

regulations governing 800 MHz trunked SMR stations. The phrase "Enhanced Specialized Mobile Radio Service," or "ESMR service" was a term created by Nextel Communications, Inc.<sup>3</sup> to identify its proposed innovative wide-area digital-technology SMR network to be implemented in various areas of the country. The Commission has not amended its rules to provide for an additional service, termed an "ESMR Service" in the private land mobile radio service.<sup>4</sup> Nor have other SMR operators requesting authorizations in the 800 MHz trunked SMR radio service to facilitate the development of wide-area SMR networks implementing advanced technologies identified their systems as an "ESMR." Rather most SMR operators have created their own "names" and acronyms to identify the consolidation of their analog SMR stations into a digital SMR network.

Applications that seek authorizations to facilitate the conversion of analog SMR stations to digital technology are filed in the 800 MHz Trunked Specialized Mobile Radio Service ("YX"), and are processed similar to other YX applications. Generally, the Commission has required that any "ESMR-type" system comply fully with the rules governing the construction

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<sup>3</sup> See Fleet Call, Inc., 6 FCC Rcd 1533 (1991), recon. denied, 6 FCC Rcd 6989 (1991).

<sup>4</sup> "Furthermore, the services that [Nextel] will provide in its enhanced networks are not functionally different from any service that it currently provides through its existing station. ... Given that digital technology and multiple base station configurations are also permitted under current rules, we must conclude the [Nextel's] proposal does not create a de facto new service. Id. at 1537.

and licensing of SMR systems as set forth in Subpart S of Part 90 of the Commission's rules.<sup>5</sup> The underlying stations to be converted to digital technology must be constructed and in operation at the time the applications for an "ESMR-type" system is filed. Therefore, private land mobile service is ongoing during the implementation of these ESMR-type systems.

The ESMR-type system continues to provide traditional dispatch/interconnect services authorized under Subpart S of Part 90,<sup>6</sup> but the introduction of the digital technology promises to increase the capacity available to the SMR operator so that he may offer a higher grade service with additional features to the current customers. The conversion of technologies in the SMR service is not dissimilar to the cellular's industry conversion of its analog system to digital cellular technology. There has been no suggestion that the implementation of the digital technology in the cellular service would create a distinct service requiring separate regulation from analog cellular systems. Therefore, the introduction of digital technology into the SMR service should not require any different results. Therefore, the claim that ESMR-type systems are a new "service" that must be immediately be treated as a commercial mobile service is erroneous and

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<sup>5</sup> Prior to the amendment of Section 90.629 of the Commission's rules, the Commission granted a waiver of the rules to permit an extended period in which to construct and place the new facilities into operation.

<sup>6</sup> See 47 C.F.R. § 90.645.

without merit.

The true intent of BAMS Petition appear to be to thwart the Commission's goal to encourage competition in the provision of wireless communications. BAMS argues on one hand that the ESMR-type systems are new services which are not included in the transition period, and then argues on the other hand that licensees of such systems, such as NEXTEL, Inc. and Cencall, Inc., have emerged as "formible competitors" to the cellular providers. It is difficult, if not impossible, to believe that this alleged fledgling service that was not in existence in early August 1993, in a mere four months could become a "formible competitor" to an established duopoly. Accordingly, BAMS Petition is internally inconsistent and must be considered as an effort to stymie the intent of Congress and the Commission that "regulatory parity" be implemented and an "even playing field" be created to ensure competitive wireless communications services for the benefit of the consumer.

Finally, Dial Page agrees with BAMS premise that the ESMR-type systems should be regulated as a commercial mobile service, but disagrees with the BAMS timing of the reclassification. Immediate reclassification of ESMR-type services will cause excessive confusion as to which part of a system must be regulated as a commercial mobile service and cause unnecessary difficulty in the customer's use of a system.

The implementation of the ESMR-type system will require a gradual conversion of existing customers of SMR stations from the analog equipment to the digital equipment. Many customers, regardless of the additional features the new technology may offer, may not wish to change out a large amount of equipment because of economic and other business reasons. Further, many businesses have chose to utilize SMR systems because of the private carrier's ability to provide a customized service to meet a particular requirement of the business. The contractual relationships that these businesses have with the SMR operator may not necessarily comply with the regulatory environment of the commercial mobile service.

Further, as conversion from analog systems to digital systems occurs, it may well be that a portion of an ESMR-type system is comprised of both existing analog facilities and newly-constructed digital facilities re-using the same frequency, both of with which the same customer may interact. It would be virtually impossible for an SMR operator to meet the regulatory requirements of two different services for the same frequency and the same customer. The administrative burden to both the Commission and the licensee to implement and comply with dual regulatory schemes is unwarranted and unnecessary.

### **III. Conclusion.**

For the foregoing reasons, Dial Page, Inc. respectfully requests that the Federal Communications Commission dismiss

the Petition for Special Relief filed by Bell Atlantic Mobile Systems, Inc., or, alternatively, consider the Petition as a late-filed Reply Comment in the Commercial Mobile Service Rule Making.

Respectfully submitted,

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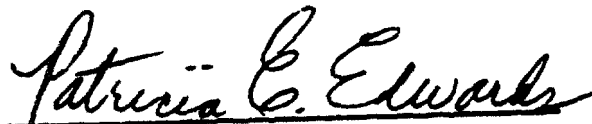
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